



Supreme Court of California
350 McAllister Street, San Francisco, CA 94102-4797
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NEWS RELEASE

Contact: [Cathal Conneely](mailto:Cathal.Conneely@courts.ca.gov), 415-865-7740

FOR IMMEDIATE RELEASE

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Summary of Cases Accepted and Related Actions During Week of September 12, 2016

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#16-311 Migdal Insurance Co. v. Insurance Co. of the State of Pennsylvania, S236177. (2nd Cir. No. 15-2588-cv; ___ Fed.Appx. ___, 2016 WL 3639102; Southern District of New York; No. 1:14-cv-00700-JPO-SN.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Second Circuit. The court ordered briefing deferred pending a determination whether to restate the questions presented. The issues as stated by the Second Circuit are: “1. Where the insurance policies of two insurance companies (identified in this question as A and B) cover the same risk, the policy of company A is primary and contains no ‘other insurance’ clause [footnote omitted], and the policy of company B, which is also primary, contains an ‘other insurance’ clause stating, ‘This insurance is excess over: . . . Any of the other insurance or your self-insurance plan that covers a loss on the same basis,’ [footnote omitted] is company A entitled under California law to equitable contribution from company B? [Footnotes omitted.] [¶] 2. Under the circumstances described above and where the amount Company A paid to settle a case exceeds the policy limit of Company B’s policy, is a clause in the insurance policy of Company B stating, ‘All payments made under any local policy issued to you by us or any other insurance company will reduce the Limits of Insurance of this policy’ enforceable under California law?”

#16-312 People v. Ruiz, S235556. (F068737; nonpublished opinion; F068737; VCF241607J.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: May a trial court properly impose a criminal laboratory analysis fee (Health & Saf. Code, § 11372.5, subd. (a)) and a drug program fee (Health & Saf. Code, § 11372.7, subd. (a)) based on a defendant’s conviction for conspiracy to commit certain drug offenses?

#16-313 *United Educators of San Francisco etc. v. California Unemployment Ins. Appeals Bd.*, S235903. (A142858, A143428; 247 Cal.App.4th 1235; San Francisco County Superior Court; CPF 12-512437.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents issues concerning the entitlement of substitute teachers and other on-call paraprofessional employees to unemployment insurance benefits when they are not called to work during a summer school term or session.

#16-314 *People v. Broyles*, S236380. (E063020; nonpublished opinion; Riverside County Superior Court; RIF1203222.) Petition for review after the Court of Appeal reversed an order granting a petition to recall sentence. The court ordered briefing deferred pending decision in *Caretto v. Superior Court*, S235419 #16-268, which presents the following issue: What is the value of an unused stolen debit card for the purpose of distinguishing between misdemeanor and felony receiving stolen property in violation of Penal Code section 496, subdivision (a)?

#16-315 *In re D.W.*, S235745. (A145470; nonpublished opinion; San Francisco County Superior Court; JW156002.) Petition for review after the Court of Appeal modified and affirmed orders in a juvenile wardship proceeding.

#16-316 *People v. Kahn*, S235762. (G050574; nonpublished opinion; Orange County Superior Court; 11NF3650.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses.

The court ordered briefing in *D.W.* and *Kahn* deferred pending decision in *People v. Macabeo*, S221852 (#14-135), which presents the following issues: (1) May law enforcement officers conduct a search incident to the *authority* to arrest for a minor traffic offense, so long as a custodial arrest (even for an unrelated crime) follows? (2) Did *Riley v. California* (2014) __ U.S. __ [134 S.Ct. 2473, 189 L.Ed.2d 430] require the exclusion of evidence obtained during the warrantless search of the suspect's cell phone incident to arrest, or did the search fall within the good faith exception to the exclusionary rule (see *Davis v. United States* (2011) 564 U.S. __ [131 S.Ct. 2419, 180 L.Ed.2d 285]) in light of *People v. Diaz* (2011) 51 Cal.4th 84?

#16-317 *People v. Dunn*, S236282. (H042059; 248 Cal.App.4th 518; Monterey County Superior Court; SS140577.) Petition for review after the Court of Appeal reversed an order denying a petition to recall sentence.

#16-318 *People v. Flynn*, S236377. (A145160; nonpublished opinion; Solano County Superior Court; FCR306559.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses.

The court ordered briefing in *Dunn* and *Flynn* deferred pending decision in *Harris v. Superior Court*, S231489 (#16-60), which presents the following issues: (1) Are the People entitled to withdraw from a plea agreement for conviction of a lesser offense and to reinstate any dismissed counts if the defendant files a petition for recall of sentence and reduction of the conviction to a misdemeanor under Proposition 47? (2) If the defendant seeks such relief, are the parties returned to the status quo with no limits on the sentence that can be imposed on the ground that the defendant has repudiated the plea agreement by doing so?

#16-319 *In re George F.*, S236397. (D069227; 248 Cal.App.4th 734; San Diego County Superior Court; J235534.) Petition for review after the Court of Appeal affirmed orders in a juvenile wardship proceeding.

#16-320 *In re Vanessa G.*, S236456. (A144616; nonpublished opinion; San Mateo County Superior Court, San Francisco County Superior Court; JUV81714, JW136205.) Petition for review after the Court of Appeal modified and affirmed orders in a juvenile wardship proceeding.

The court ordered briefing in *George F.* and *Vanessa G.* deferred pending decision in *In re Ricardo P.*, S230923 (#16-41), which presents the following issue: Did the trial court err imposing an “electronics search condition” on minor as a condition of his probation when it had no relationship to the crimes he committed but was justified on appeal as reasonably related to future criminality under *People v. Olguin* (2008) 45 Cal.4th 375 because it would facilitate his supervision?

#16-321 *People v. Gonzales*, S236362. (H042040; nonpublished opinion; Santa Clara County Superior Court; C1371872.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

#16-322 *People v. Juarez*, S236160. (H042402; nonpublished opinion; Santa Cruz County Superior Court; F25974.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

The court ordered briefing in *Gonzales* and *Juarez* deferred pending decision in *People v. Page*, S230793 (#16-28), which presents the following issue: Does Proposition 47 (“the Safe Neighborhoods and Schools Act”) apply to the offense of unlawful taking or driving a vehicle (Veh. Code, § 10851), because it is a lesser included offense of Penal Code section 487, subdivision (d), and that offense is eligible for resentencing to a misdemeanor under Penal Code sections 490.2 and 1170.18?

#16-323 *People v. Guiher*, S236401. (F071469; nonpublished opinion; Kern County Superior Court; MF011436A.) Petition for review after the Court of Appeal affirmed and denying a post-conviction motion to modify sentence.

#16-324 *People v. Jones*, S235901. (E063745; 1 Cal.App.5th 221; San Bernardino County Superior Court; FVA1301982.) Petition for review after the Court of Appeal affirmed in part and reversed in part an order denying a petition to recall sentence.

#16-325 *People v. Nichols*, S235636. (F071609; nonpublished opinion; Kern County Superior Court; BF132222A.) Petition for review after the Court of Appeal affirmed an order denying a post-conviction motion for resentencing.

#16-326 *People v. Smith*, S236295. (B261140; nonpublished opinion; Los Angeles County Superior Court; MA063719.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses and denied a petition for writ of habeas corpus.

The court ordered briefing in *Guiher*, *Jones*, *Nichols*, and *Smith* deferred pending decision in *People v. Valenzuela*, S232900 (#16-97), which presents the following issue: Is a defendant eligible for resentencing on the penalty enhancement for serving a prior prison term on a felony conviction after the superior court has reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47?

#16-327 *People v. Hamilton*, S236490. (E064030; nonpublished opinion; Riverside County Superior Court; INF1301035.) Petition for review after the Court of Appeal reversed an order denying a petition to recall sentence.

#16-327 *People v. Smith*, S236112. (E062858; 247 Cal.App.4th 717; Riverside County Superior Court; SWF10000490.) Petition for review after the Court of Appeal reversed an order denying a petition to recall sentence.

The court ordered briefing in *Hamilton* and *Smith* deferred pending decision in *People v. Gonzales*, S231171 (#16-39), which presents the following issue: Was defendant entitled to resentencing under Penal Code section 1170.18 on his conviction for second degree burglary either on the ground that it met the definition of misdemeanor shoplifting (Pen. Code, § 459.5) or on the ground that section 1170.18 impliedly includes any second degree burglary involving property valued at \$950 or less?

16-329 *In re Larry N.*, S236327. (A144172, A145148; nonpublished opinion; Contra Costa County Superior Court; J1401240.) Petition for review after the Court of Appeal affirmed orders in a juvenile wardship proceeding. The court ordered briefing deferred pending decision in *People v. Hall*, S227193 (#15-157), which presents the following

issues: (1) Are probation conditions prohibiting defendant from: (a) “owning, possessing or having in his custody or control any handgun, rifle, shotgun or any firearm whatsoever or any weapon that can be concealed on his person”; and (b) “using or possessing or having in his custody or control any illegal drugs, narcotics, narcotics paraphernalia without a prescription,” unconstitutionally vague? (2) Is an explicit knowledge requirement constitutionally mandated?

#16-330 *People v. Lupien*, S236230. (G051852; nonpublished opinion; Orange County Superior Court; 02NF1132.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

#16-331 *People v. Noriega*, S236298. (G051673; nonpublished opinion; Orange County Superior Court; 06NF1119.) Petition for review after the Court of Appeal affirmed an order granting in part and denying in part a petition to recall sentence.

The court ordered briefing in *Lupien* and *Noriega* deferred pending decision in *People v. Franco*, S233963 (#16-218), which presents the following issue: For the purpose of the distinction between felony and misdemeanor forgery, is the value of an uncashed forged check the face value (or stated value) of the check or only the intrinsic value of the paper it is printed on?

#16-332 *People v. Moore*, S235710. (E063358; nonpublished opinion; Riverside County Superior Court; INF1400898.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. The court ordered briefing deferred pending decision in *People v. Franco*, S233973, and *Caretto v. Superior Court*, S235419 #16-268, which concern, respectively, the value of an uncashed forged check and the value of an unused stolen debit card for the purpose of distinguishing between misdemeanor and felony receiving stolen property in violation of Penal Code section 496, subdivision (a).

#16-333 *People v. Williams*, S235117. (B259888; nonpublished opinion; Los Angeles County Superior Court; TA130465.) Petition for review after the Court of Appeal modified and affirmed judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Canizales*, S221958 (#14-134), which concerns jury instructions on the “kill zone” theory of attempted murder, and, as to one petitioner, for *In re Martinez*, S226596 (#15-158), which concerns entitlement to relief under *People v. Chiu* (2014) 59 Cal.4th 155.

DISPOSITIONS

Review in the following cases, which were granted and held for *People v. Conley* (2016) 63 Cal.4th 646, was dismissed:

#14-04 People v. Lester, S214648.

#15-65 People v. Cisneros, S225197.

#16-177 People v. Meraz, S233213.

The following cases were transferred for reconsideration in light of *People v. Conley* (2016) 63 Cal.4th 646:

#13-71 People v. Lewis, S211494.

#13-110 People v. Zapata, S213877.

#13-114 People v. Mallett, S214584.

#14-13 People v. Zarate, S215117.

#14-17 People v. Contreras, S215516.

#14-27 People v. Vega, S216033.

#14-52 People v. Lara, S217787.

#15-146 People v. Turnage, S226625.

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The Supreme Court of California is the state's highest court and its decisions are binding on all other California state courts. The court's primary role is to decide matters of statewide importance and to maintain uniformity in the law throughout California by reviewing matters from the six districts of the California Courts of Appeal and the fifty-eight county superior courts (the trial courts). Among its other duties, the court also decides all capital appeals and related matters and reviews both attorney and judicial disciplinary matters.